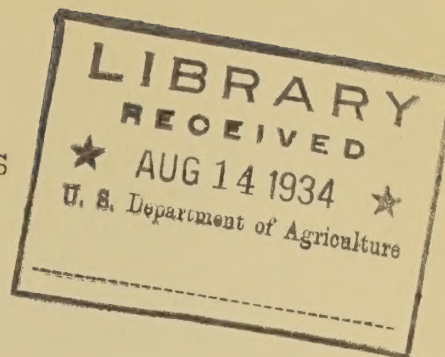


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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS



UNITED STATES OF AMERICA and
HENRY A. WALLACE, Secretary of
Agriculture,

Plaintiffs,

v.

E. M. DWYER,

Defendant.

In Equity

No. _____

BILL OF COMPLAINT

Plaintiffs, by Francis J. W. Ford, United States Attorney in and for the District of Massachusetts, acting under the direction of the Attorney General, at the request of the Secretary of Agriculture, bring this bill in equity and allege:

I.

Plaintiff, Henry A. Wallace, is the Secretary of Agriculture of the United States (referred to hereinafter as the Secretary) and joins in this action in discharge of his official duties and in the public interest. This proceeding is brought to restrain and enjoin defendant from engaging in the business of handling, marketing, selling, or otherwise distributing fluid milk or cream in the Greater Boston Market without a license in violation of the Act of May 12, 1933, as amended, known as the Agricultural Adjustment Act (referred to hereinafter as the Act).

II.

Defendant, E. M. Dwyer, otherwise known as Edwin M. Dwyer, is a citizen and resident of the State of Massachusetts, residing and having his principal place of business in the town of Weymouth, County of Norfolk, in said State.

III.

Pursuant to and by virtue of the authority vested in the Secretary by Section 8 (2) of the Act, after due notice and an opportunity for a hearing to interested parties and in accordance with General Regulations Agricultural Adjustment Administration Series I, Revision I, the Secretary entered into a Marketing Agreement with the producers and distributors of fluid milk representing more than seventy percent by volume of the milk produced for and distributed in the Greater Boston Market as defined in said Marketing Agreement. This Agreement is hereto attached, marked

"Exhibit A", and made a part hereof. Said Agreement was executed by the persons whose names appear as signatories, including defendant, and was declared by the Secretary to be effective on and after November 3, 1933. Subsequent to the execution of this Agreement and on November 3, 1933, defendant was signatory to an instrument entered into by certain contracting producers and certain contracting distributors, naming Frederick S. Snyder to act as Director under said Marketing Agreement. This designation of said Snyder as Milk Director was subsequently approved by the Secretary and said Snyder acted as such Milk Director and performed the duties of this office. Said Marketing Agreement was terminated by order of the Secretary effective on February 1, 1934.

IV.

Pursuant to and by virtue of the authority vested in the Secretary by Section 8 (3) of the Act and in accordance with the application and consent of the signatories to said Marketing Agreement, the Secretary issued a "License for Milk -- Greater Boston Market" which became effective on and after November 3, 1933. A copy of this License, hereinafter referred to as License No. 15, is hereto attached, marked "Exhibit B", and made a part hereof.

V.

License No. 15 remained in effect until its termination by order of the Secretary on March 15, 1934. A copy of said order is hereto attached, marked "Exhibit C", and made a part hereof.

VI.

Pursuant to and by virtue of the authority vested in the Secretary by Section 8 (3) of the Act, on March 15, 1934, the Secretary issued another "License for Milk -- Greater Boston Market", hereinafter referred to as License No. 38. Said License by the terms thereof became effective on and after March 16, 1934. This License has been amended by the Secretary in accordance with the Act and with the General Regulations promulgated thereunder by amendments effective April 30, 1934, May 31, 1934, and July 17, 1934. A copy of this amended License is attached hereto, marked "Exhibit D", and made a part hereof. As amended, License No. 38 has been continuously in effect since March 16, 1934, up to and including the present date, except that it has been revoked as to the defendant as hereinafter more fully set forth. Subsequent to the issuance of License No. 38 and on March 16, 1934, the Secretary, pursuant to the provisions of said License No. 38, designated Einer Jensen as Market Administrator thereunder, and since said date, said Jensen has been and now is acting as such Market Administrator and performing the duties of said office. License No. 38 provides that each and every distributor shall fulfill any and all of his obligations which shall have arisen or which may hereafter arise in connection therewith by virtue of or pursuant to License No. 15.

VII.

Defendant was on the effective date of Licenses Nos. 15 and 38, and has been thereafter continuously engaged in the business of purchasing milk and cream from producers thereof, residing in the States of Vermont and Massachusetts and selling said milk and cream, in whole or in part in fluid form, to divers persons for ultimate consumption in the Greater Boston Market. Said defendant has continuously resided and had his principal place of business in the town of Weymouth, a town which is within the Greater Boston Market as defined in Exhibit B of the aforesaid Marketing Agreement, in Exhibit B of License No. 15 and in Part 1, Sec. C of License No. 38. Defendant is a distributor as defined in and by Licenses Nos. 15 and 38 and was licensed in and by said Licenses Nos. 15 and 38 to engage in the distribution of fluid milk and cream in the Greater Boston Market.

VIII.

On August 25, 1933, the Secretary, pursuant to the powers vested in him by the Act, promulgated General Regulations, Agricultural Adjustment Administration Series 3 (referred to hereinafter as the Regulations), which Regulations were duly approved by the President of the United States on August 26, 1933. Said Regulations relate to the revocation or suspension of licenses issued pursuant to Section 8 (3) of the Act, and the procedure in connection therewith. A copy of said Regulations is attached hereto, marked "Exhibit E", and made a part hereof.

IX.

On May 9, 1934, the Secretary, having reason to believe that the defendant had violated the terms and conditions of License No. 15 and had violated and was violating the terms and conditions of License No. 38, did, pursuant to said Regulations, prepare a written notice ordering said defendant to show cause in writing on or before May 21, 1934, why his license under said License No. 38 should not be revoked or suspended by the Secretary. The notice was duly served upon the defendant by depositing it in the United States mails registered and addressed to the defendant at his last known business address. Pursuant to the Regulations said notice set forth the alleged violations of said Licenses by the defendant, including the failure and refusal of defendant to furnish reports and information to the Director and Market Administrator required under the terms of Licenses Nos. 15 and 38, the failure and refusal of defendant to pay to the Director and Market Administrator sums required to be paid under the equalization pool provisions of both licenses, the failure and refusal of defendant to pay for milk in accordance with the terms and conditions of License No. 38, the failure and refusal of defendant to make deductions from payments due to producers of milk as required by License No. 38 and to pay such sums to the Market Administrator, and the purchasing of milk by defendant from producers who had not authorized payments to be made as directed in License No. 38. On May 18 the defendant filed his answer to the charges alleged in said notice. The violations alleged in said notice and the allegations contained in said answer more fully appear from the order of the Secretary

revoking the license of said defendant (hereinafter referred to as the "Order of the Secretary") a copy of which is hereto annexed, marked "Exhibit F" and made a part hereof.

X.

The Secretary found the answer of said defendant to be insufficient, and pursuant to said Regulations, appointed May 29, 1934, as the time, and Courtroom No. 5 of the Post Office Building, Boston, Massachusetts as the place for a public hearing where evidence should be taken and considered upon the charges contained in said notices and the answers thereto of the defendant. Although notified as aforesaid, said defendant did not appear in person in the case and his counsel, although present, declined to enter a formal appearance. Said hearing was conducted by a Presiding Officer duly designated by the Secretary pursuant to said Regulations. Counsel for the Secretary introduced evidence in support of the charges set forth in said notices, examined witnesses under oath and introduced documentary evidence. Full opportunity was allowed for cross-examination and objection by the defendant's counsel if he so desired. After the Government had rested its case, the Presiding Officer again asked if the defendant's counsel wished to introduce evidence into the record. The defendant's counsel did not do so.

XI.

All of the oral evidence offered and received at said hearing was duly reduced to writing. After the conclusion of said hearing, the Presiding Officer, in accordance with the Regulations, after an examination and consideration of all the evidence introduced at said hearing, made Proposed Findings of Fact and Recommendations, which, together with a complete transcript of all oral and documentary evidence received at said hearing, were transmitted to the Secretary.

XII.

Upon consideration of the Proposed Findings and Recommendations of said Presiding Officer and of all the evidence introduced upon said hearing, the Secretary, pursuant to the provisions of Section 8 (3) of the Act and pursuant to the Regulations made and executed an Order, "Exhibit F" aforementioned, in and by which the Secretary (a) found that the defendant had violated the terms and conditions of both License No. 15 and License No. 38, and (b) revoked the license under License No. 38 of said defendant. Said order of the Secretary was duly transmitted to defendant by United States registered mail and was duly received by him on June 26, 1934.

XIII.

The defendant violated the terms and conditions of said License Nos. 15 and 38 in the respects found and set forth by the Secretary in his Order revoking the license of defendant. At no time subsequent to May 9, 1934, the date of the issuance of said notice to show cause by the Secretary, has the defendant complied with the terms and conditions

and the other two were in the
same position as the first.

The first of these was a
man of about 40 years of age,
of medium height and build,
with dark hair and eyes,
and a fair complexion. He
was dressed in a dark suit,
white shirt, and dark tie.
He was standing in the
middle of the room, and
was looking towards the
left. He was holding a
book in his right hand, and
was looking at it. He was
standing in the middle of the
room, and was looking towards
the left. He was holding a
book in his right hand, and
was looking at it.

The second of these was a
man of about 30 years of age,
of medium height and build,
with dark hair and eyes,
and a fair complexion. He
was dressed in a dark suit,
white shirt, and dark tie.
He was standing in the
middle of the room, and
was looking towards the
left. He was holding a
book in his right hand, and
was looking at it.

The third of these was a
man of about 20 years of age,
of medium height and build,
with dark hair and eyes,
and a fair complexion. He
was dressed in a dark suit,
white shirt, and dark tie.
He was standing in the
middle of the room, and
was looking towards the
left. He was holding a
book in his right hand, and
was looking at it.

THE

The first of these was a
man of about 40 years of age,
of medium height and build,
with dark hair and eyes,
and a fair complexion. He
was dressed in a dark suit,
white shirt, and dark tie.
He was standing in the
middle of the room, and
was looking towards the
left. He was holding a
book in his right hand, and
was looking at it.

of either of said Licenses. Since the order of the Secretary revoking his license, defendant has continued to engage in business as a distributor of milk in the Greater Boston Market.

XIV.

Plaintiffs are informed and believe and upon such information state the fact to be that the defendant is openly and defiantly announcing that he is not and will not obey the terms of said License No. 38 or of said order of the Secretary, but that he intends to and will continue to engage in business as a milk distributor notwithstanding the order of the Secretary revoking his license.

XV.

The Order of the Secretary revoking defendant's license finds as a fact, and plaintiff alleges the fact to be, that the business of the defendant in purchasing, marketing, distributing, selling and handling milk and cream for consumption in the Greater Boston Market has been and now is in the current of interstate commerce by reason of the following facts:

(a) That defendant for some time prior to November 3, 1933, and since that date to the present time has continuously and almost daily purchased milk and cream from producers whose dairy farms are located in the State of Vermont and in the State of Massachusetts. The milk and cream so purchased by defendant from producers in Vermont was and is ordered by telephone and delivered by rail from the Clyde Valley Cooperative Creamery Association, Derby, Vermont, to defendant in the town of Weymouth in the State of Massachusetts. This milk and cream was and is delivered in containers owned by the Clyde Valley Cooperative Creamery Association which markets the products of its members. Said defendant further purchased and now purchases milk and cream in the State of Massachusetts from producers. Upon information and belief plaintiffs allege that the milk and cream obtained from Vermont was and is emptied into vats from the original containers and intermingled at the defendant's plant in Massachusetts with the milk and cream obtained from the producers in Massachusetts, and that the Vermont milk and cream when not mixed with milk and cream produced in Massachusetts before bottling it indiscriminately intermingled after bottling with milk and cream produced in Massachusetts. This milk and cream was and is thereafter sold and distributed by the defendant to consumers for consumption in the Greater Boston Market.

(b) The purchase by telephone of milk in Vermont by the defendant, the delivery thereof to him in Massachusetts in the producers' containers, the inextricable intermingling of this milk with the milk produced in Massachusetts and the distribution and sale of such milk in fluid form in the Greater Boston Market constituted and does now constitute one continuous course of dealing. Each individual transaction was and is merely a part thereof and the intrastate transactions were and are so bound up with the interstate transactions that both the intrastate and interstate transactions were and are in the current of interstate commerce.

XVI.

The existing economic depression has had a disastrous effect upon the price received by farmers for dairy products. In February, 1934, the prices received by farmers for dairy products in terms of purchasing power were only 65% of prices received during the pre-war period -- August, 1909 -- July, 1914. During the year 1933 milk producers delivering milk to the Greater Boston Market from the 181-200 mile milk zone received an average net price of \$1.40 per hundredweight for 3.5 milk, or a little more than one half of the net price of \$2.64 per hundredweight received by them during the year 1929. The gross return to the producers of dairy products in the United States declined 39% from the year 1929 to the year 1932. The gross return to producers of dairy products in Massachusetts declined 41% from 1929 to 1932; in Vermont such decline was 44%; in New Hampshire such decline was 39%; and in Maine, such decline was 62%. In June, 1934, the parity price, as defined by the Act, which Massachusetts producers should have received for 3.7 milk sold at wholesale was \$3.64 per hundredweight.

XVII.

The issuance of Licenses Nos. 15 and 38 was part of a comprehensive nation-wide plan being put into execution by the Secretary of Agriculture, pursuant to the powers vested in him by the Act, for the purpose of restoring the purchasing power of the dairy farmer by the gradual adjustment of such purchasing power to its pre-war level during the period of 1909-1914. The licenses effectuate the purposes of the Act by (1) fixing a fair and reasonable price which producers of milk shall receive for their milk and insuring receipt of such prices by them, (2) assuring to all producers a uniform price for their milk, irrespective of the actual use of such milk made by the particular distributor whom each producer supplies and (3) encouraging the production of milk at a uniform level throughout the year. Licenses for milk, similar to the Boston Licenses, have been issued and are now in effect in thirty-nine important metropolitan areas in the United States. Additional licenses are now being formulated and will shortly be issued by the Secretary. Licenses 15 and 38 and similar milk licenses issued by the Secretary throughout the nation were and are reasonable and appropriate means for regulating interstate commerce and increasing the flow thereof (1) by increasing the return to farmers for milk handled in the current of interstate commerce, and (2) by increasing the purchasing power of dairy farmers to the end that they may in turn increase their purchases and so stimulate interstate commerce in industrial products.

XVIII.

It is impossible for the Secretary of Agriculture to regulate the business of purchasing, selling, distributing and handling milk shipped from states other than the State of Massachusetts into the Greater Boston Market for consumption therein without regulating the business of purchasing, selling, distributing and handling milk produced in the State of Massachusetts for consumption in the Greater Boston Market. Not less than 90% of all of the milk sold as whole milk in the Greater Boston Market is produced outside of the State of Massachusetts. For the year 1933, 59% of the milk received in metropolitan Boston came from Vermont, 11% from New

Hampshire, 13% from Maine and only 9 $\frac{1}{2}$ % from Massachusetts. For the year 1933, the cream received at Boston was produced in eighteen different states. Only .3% of the total amount of cream received in metropolitan Boston for the year 1933 was produced in Massachusetts. An attempt to require an increased price to be paid to milk producers who are non-residents of the State of Massachusetts for milk sold for consumption in the Greater Boston Market, without requiring an equal increase in the price paid to Massachusetts producers for similar milk, would result in the complete demoralization of the market. In order to maintain their position in the Greater Boston Market, producers outside of the State of Massachusetts would be forced to engage in a price war with Massachusetts producers, in disregard of the regulation attempting to fix the price of their milk. Such price war would result in a lower price for milk than the price which maintained prior to such attempted regulation. Strict enforcement of the fixed price regulation only as to non-resident producers would result in the elimination from the Greater Boston Market of milk produced outside of the State of Massachusetts. Intrastate commerce in milk produced in the State of Massachusetts must be regulated together with interstate commerce or the milk supply for the Greater Boston Market will be seriously endangered. Because intrastate commerce in milk produced in the State of Massachusetts for sale in the Greater Boston Market is in competition with, and burdens and affects interstate commerce in milk produced outside of the State of Massachusetts and sold for consumption in the Greater Boston Market, all milk sold for consumption in the Greater Boston Market (whether produced within or without the State of Massachusetts), is in the current of interstate commerce.

XIX.

The legal remedy of fines for doing business without a license is inadequate and unless an injunction is granted the purposes of the Act in raising prices for the farmer will be made impossible of attainment, the license will be made ineffectual and the public interest which the Act seeks to serve in the emergency will be endangered and prejudiced for the following reasons:

(a) The example of this defendant continuing his business in complete disregard of the requirements of said License No. 38 and notwithstanding the fact that his license has been revoked will be to demoralize and destabilize the entire milk market in the Greater Boston Market, to encourage and incite other distributors licensed under the same License No. 38 to violate the terms and conditions of said License and to further encourage licensees licensed under milk Licenses issued by the Secretary (as hereinabove alleged) in the large metropolitan areas throughout the country, to violate such Licenses, with the consequent demoralization and unstabilization of such markets.

(b) Unless an injunction is granted the open disregard by defendants and others for the license involved in this case, and for the Act itself, will bring the policies of the government and of the Secretary into disrepute and will thwart the national policy as declared by Congress in said Act. Such evasions by defendant and others will literally tear down the structure erected for the protection of the distressed dairy industry, and will endanger the success of the Agricultural program with respect to other commodities as to which Licenses have been issued.

(c) The legal remedy of plaintiffs by way of fines is totally inadequate and the intervention of a court of equity is necessary unless the Agricultural Adjustment Act and the licenses issued thereunder are to fail of enforcement.

XX.

Section 8-A(6) of the Act, as amended, authorizes this Court specifically to enforce the order revoking the License of defendant and to prevent and restrain defendant from doing business in violation of the order revoking his License.

WHEREFORE PLAINTIFFS PRAY:

1. That a writ of subpoena issued directed to the defendant, commanding him to appear herein and answer under oath the allegations contained in this petition, and to abide by and perform such orders and decrees as the Court may make in the premises.
2. That the Court issue a preliminary injunction restraining defendant and each of his respective agents, attorneys, employees and assigns, and all persons acting under him or on his behalf, or claiming so to act, from distributing, selling, marketing, transporting, or in any other manner handling milk and cream for consumption in the Greater Boston Market, as defined and described in License No. 38.
3. That thereafter said preliminary injunction be made permanent.
4. That plaintiffs be given all other, further and different relief as to this Court may seem just and proper.
5. That plaintiffs recover their costs and disbursements.

United States Attorney

Special Assistant to the
Attorney General.

HOMER S. CUMMINGS;
Attorney General

HAROLD M. STEPHENS
Assistant Attorney General

CITY OF WASHINGTON)
) SS
DISTRICT OF COLUMBIA)

M. L. Wilson, being first duly sworn on oath deposes and says that he is Assistant Secretary of Agriculture of the United States of America; that Henry A. Wallace, Secretary of Agriculture of the United States of America and one of the plaintiffs in the foregoing bill of complaint, is absent from the City of Washington on the date of the execution of this affidavit and that affiant, M. L. Wilson, is now the acting Secretary of Agriculture in the absence of the Secretary as aforesaid; that affiant makes this affidavit upon behalf of both of the plaintiffs in the foregoing bill of complaint; that affiant has read the foregoing bill of complaint and knows the contents thereof; that the same are true of his own knowledge, except as to such matters and things as are therein stated or alleged on information and belief, and as to such matters and things he is informed and believes that they are true.

Subscribed and sworn to before me a Notary Public in and for the District of Columbia this _____ day of July, 1934.

My commission expires _____

